IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1675 OF 2004

Surendrakumar T. Aggarwal
and another ... Petitioners

versus

State of Maharashtra ... Respondent

...

Mr. M.S. Mohite, for the Petitioners.

Mr. More, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

16th September 2004

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. More, A.P.P., waives notice for the Respondent. As short question is involved, the petition is taken up for final disposal forthwith by consent.

. The Petitioners are accused Nos. 2 and 5 in Sessions Case No. 399 of 1990. The said Sessions Case was assigned to Judge Shri N.P.

Dalvi of the City Civil and Sessions Court, Greater Mumbai. It is seen that major part of the prosecution evidence, including the eye witnesses, has already been recorded and the matter was, therefore, part heard. It appears that recently, due to change of roster, the assignment of Judge Shri N.P. Dalvi came to be changed and I am told that he is given Civil side. But it is not in dispute that he continues to be in the same Court. In view of the change of assignment by the Principal Judge of the City Civil and Sessions Court, Greater Mumbai, the case stood assigned to some other Judge of the same Court, Judge Shri Kirad. In this backdrop, the Petitioners made application before Judge Shri Kirad, to whom the said Sessions Case has been presently assigned, pointing out the decision of the Division Bench of this Court that matter ordinarily ought to be conducted further by the same Judge Shri N.P. Dalvi. The learned Judge gave time to the Petitioners to approach this Court for obtaining appropriate directions. The grievance made before this Court is that once the case was allotted to Judge Shri N.P. Dalvi, Additional Sessions Judge, and was partly heard before him, inspite of the change of assignment

by the Principal Judge of the City Civil and Sessions Court, Greater Mumbai, the case ought to be conducted before the same Judge Shri N.P. Dalvi, as he continues to be the Judge of that Court. To buttress this proposition, reliance is placed on the decision of the Division Bench of our High Court reported in 2002 ALL MR (Cri) 1370 in Daulatrao Dashrath Dhonde v. The State of Maharashtra and others. In para 6 of this decision, the Court has observed thus :

> " . . . Once the case allotted to a particular Additional Sessions Judge is partly heard by that Judge, the Sessions Judge cannot have the power to withdraw the case from him, because so far as the judicial powers are concerned, both are equal. In such cases, the High Court has got the power to withdraw the case as High Court is undoubtedly judicially superior court."

. In view of the exposition of the Division Bench, referred to above, and the principles underlying therein, the Petitioners ought to succeed by issuing directions that the Sessions

Case No. 399 of 1990, which is presently pending on the file of Judge Shri Kirad, Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, be transferred to Judge Shri N.P. Dalvi, Additional Sessions Judge of the City Civil and Sessions Court, Greater Mumbai, so long as he continues to be the Judge of that Court, who shall continue with the trial from the stage where he had left the proceedings part heard. Ordered accordingly.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)